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SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 March 1997, at 4.30 p.m.

Chairman: Mr. SOMOL (Czech Republic)

CONTENTS

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (continued)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (continued)

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The meeting was called to order at 4.30 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1997/13-16, 107, 109, 111, 116 and 117)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 7) (continued) (E/CN.4/1997/23 and 24; A/51/392)

1. Mr. BERNALES BALLESTEROS (Special Rapporteur on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination), introducing the report on his activities in 1996 (E/CN.4/1997/24), said that it analysed the problems encountered in defining mercenaries and the scope of their activities; described his visit to South Africa and analysed the information he had gathered there on a private company known as Executive Outcomes; formulated some working hypotheses on the implications, for State sovereignty and human rights, of the existence of private companies that provided paid security services abroad; and discussed the presence of mercenaries in Zaire in connection with the armed conflict in that country.

2. The use of mercenaries continued, particularly in certain armed conflicts in Africa, because of the lack of relevant legislation or the ambiguity and complexity of the few international legal provisions existing on the subject. It was regrettable that most States did not characterize mercenary activity as a separate and prosecutable offence in their national legislation, despite the United Nations repeated condemnation of such activity. He thus reiterated his recommendation that mercenary activities be specifically prohibited by both national laws and direct, simple and effective international standards. Moreover, because mercenaries and those who hired them usually sought refuge in the ambiguities of the relevant legal provisions or claimed to be nationals of the country victimized by mercenary aggression, reliable information must be gathered on the payment and other benefits received by such persons in order to establish the mercenary nature of their activities.

3. He was grateful to the South African Government for inviting him to visit the country in October 1996 and for doing its utmost to ensure the success of the visit. The Government was aware that the many security services companies registered in South Africa must be more closely regulated, especially when such companies offered their services abroad or provided military assistance, and a bill was to be introduced on the subject. It had conferred with representatives of Angola and Sierra Leone on the contracts concluded with the South African-registered company Executive Outcomes, which had allegedly been implicated in mercenary activities. The Special Rapporteur's report contained an analysis of Executive Outcomes as a type of company that could proliferate on the international market.

4. More in-depth studies were needed on that new kind of security company, which could become an alternative security model for countries with internal conflicts, and criteria for such a study were suggested in paragraphs 92 to 111 of the report. Although not all types of military advisory assistance

were illegal, responsibility for a country's internal order, security and protection of the exercise of human rights belonged to the State, which must fulfil its responsibilities through its law-enforcement services and defence forces, and not through recourse to private foreign companies. The Commission should therefore authorize a more thorough investigation of the problem.

5. The armed conflict in eastern Zaire had given rise to a massive influx of mercenaries. Although the report did not deal with that situation, he and the Special Rapporteur on the situation of human rights in Zaire had sent, on 9 January 1997, an urgent communication to the Minister for Foreign Affairs of Zaire asking for a response to allegations that the Government was using hundreds of mercenaries to assist its forces in launching a counter-offensive. No reply had been received to date, but it had become a matter of public knowledge that mercenaries were openly participating with the government forces and, reportedly, with the opposition forces as well.

6. Far from representing a solution, the presence of mercenaries was aggravating the conflict and the situation of the local population and of the thousands of Rwandan refugees forced to flee from their camps. The withdrawal of the mercenaries was therefore an essential component of efforts to secure a ceasefire. He trusted that the Commission would adopt a resolution to that effect at its current session.

7. Mr. MAJID (Bangladesh) said that his delegation fully supported the statement made by the representative of Indonesia and believed that the Palestinians had the inalienable right to return to their homeland and establish an independent State with Al-Quds al-Sharif (Jerusalem) as its capital.

8. While the peace process had led to momentous developments in the Middle East, violations of human rights continued in the occupied territories, and were aggravated by the prolonged occupation. The prospects for peace, that had brightened somewhat with the signing of the Protocol concerning the redeployment in Hebron and the agreement on a framework for the final status negotiations had been dimmed again by the Israeli Government's decision to build new settlements on the West Bank and in east Jerusalem, apparently in an attempt to pre-empt the outcome of negotiations by changing the demographic composition of Jerusalem.

9. While Israeli withdrawal from all Arab territories was a prerequisite for peace, the critical test of Israel's commitment to the peace process would be its reaction to international pressure to reverse its decision to build new settlements in east Jerusalem. It was regrettable that the Government of Israel had not so far replied to the Secretary-General's request that it implement Commission resolution 1996/5, which called for Israeli withdrawal from the occupied territories.

10. Despite the transfer of some powers to the Palestinian Authority and some important political changes within the occupied territories, Israel was still an occupying power and therefore bound by humanitarian law. He thus urged the Commission to call on the Government of Israel to guarantee human rights in the occupied territories, and thus make a very real investment in political and regional stability.

11. Mr. ALDOURI (Observer for Iraq) said that the right of people to self-determination, and their rights to choose a political system without outside interference, dispose of their own natural resources and pursue economic, social and cultural development as they saw fit, were fundamental principles of international law, enshrined in the Charter of the United Nations and various international instruments. Those rights precluded the threat or use of force or other measures that would deprive people of their rights.

12. Iraq had been the victim of aggression, in violation of those principles, since 1990. Direct military intervention in northern Iraq by the United States and its Western allies was a violation of Iraqi territorial integrity. The extended no-fly zones declared by the United States and its allies, as well as the three missile attacks launched by the United States since 1992, were a violation of Iraqi sovereignty.

13. The continued economic blockade of Iraq was in violation of the Iraqi peoples' right to dispose freely of their natural resources under article 1, paragraph 2, common to the International Covenants on Human Rights. Furthermore, the United States had illegally attempted to change the political system in Iraq by infiltrating northern Iraq with officers of the Central Intelligence Agency and their collaborators.

14. In view of the extent to which the right of the Iraqi people to self-determination was being violated, he called on the Commission to denounce all external interference in the country's internal affairs.

15. Mr. GOMES de SANTA CLARA (Observer for Portugal) said that his Government was being prevented by force from administering the non-self-governing territory of East Timor and that the right of the East Timorese people to self-determination had been denied to them since 1975. However, there were some encouraging signs: there was a dialogue between the Governments of Portugal and Indonesia; a more low-key dialogue was taking place among some representatives of the East Timorese people; world opinion was being mobilized, as shown by the awarding of the Nobel Peace Prize to Bishop Carlos Ximenes Belo and Mr. José Ramos Horta; and Governments around the world, especially in Europe, were becoming increasingly assertive in their defence of the basic human rights of the East Timorese people. Nevertheless, the lack of decisive progress was frustrating and, in the meantime, the violation of the right to self-determination had led to a lack of respect for other human rights.

16. He called on the Commission to persevere in its efforts to achieve a just and comprehensive solution which fully respected the rights of the East Timorese people. Goodwill and a willingness to enter into dialogue had overcome human rights abuses in more difficult situations throughout the world.

17. Ms. ODEH (International Commission of Jurists) said that the practices of the Israeli authorities in the West Bank, Gaza Strip and Jerusalem continued to be in flagrant violation of international humanitarian law. She reaffirmed the rights of the Palestinian people, particularly their right to life, citing the number of Palestinians killed by the Israeli security forces

though, admittedly, the Israeli authorities had punished some of those responsible for such killings. Torture, in contravention of international conventions but legalized by the Israeli Supreme Court, was being practised against Palestinian prisoners; 42 Palestinians had been killed in Israeli prisons. Imprisonment and administrative detention were still widely practised, despite some liberalization.

18. The closure of the occupied territories in 1996 was an attempt to divide Palestinians and had severely restricted their freedom of movement, leaving them unable to visit East Jerusalem, their spiritual centre. The daily lives of all the inhabitants of Jerusalem had been seriously affected by the closures; their access to health care and to their places of worship was limited, the economy was suffering and unemployment was rising.

19. The Israeli Government had continued to confiscate Palestinian lands in 1996 and the new settlements being planned, with financial backing from the Government, were proof of Israeli colonization plans. An independent society based on the rule of law was necessary if the fundamental rights of the Palestinian people were to be guaranteed, and she asked the Commission to put pressure on Israel to withdraw from the occupied territories and, in the meantime, to ensure that there was no further deterioration in the human rights situation of the Palestinians.

20. Ms. MASOOMA ALI (Afro-Asian Peoples' Solidarity Organization) said that, according to the generally accepted international standards, the right to self-determination belonged to peoples under colonial or alien domination or foreign occupation. Attempts were currently being made, however, to expand that definition so as to permit the break-up of nation States at the hands of groups setting themselves up to be separate nations. Less than 4 per cent of the world's population lived in States whose boundaries corresponded to ethnic ones and the phenomenon of groups defining themselves in terms of religion, ethnicity or race was growing in almost all multireligious or multi-ethnic States irrespective of their form of government.

21. If such conflicts were to be resolved by so-called self-determination i.e. secession, the number of States in the world would rise to over 5,000 and the process of realignment of borders and creation of new entities would be never-ending. Moreover, democracies' ability to provide expression for the concerns of different groups would be endangered if the new definition of self-determination acquired legitmacy. Minorities had to be assured of their rights and of due representation in the structures of governance, so that they could define their own destinies in accordance with their aspirations, but those rights must not usurp the established rights of others.

22. Mr. PUNJABI (Himalayan Research and Cultural Foundation), said that the right of self-determination could not be stretched beyond its definition by international law or utilized to generate conflicts leading to the dismemberment of States. The issue was addressed in General Assembly resolution 2625 (XXV) as well as in the report on self-determination by the

Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1993/43), which ruled out secession from existing States as an option in the exercise of self-determination.

23. Referring specifically to the issue of the right to self-determination in Jammu and Kashmir, he contrasted the efforts being made by the Indian Government to remove any distortions from the special status of the Indian part of the territory with the situation in the part under Pakistani rule, where adult franchise had not yet been granted to the people of the Northern Areas seized in 1947.

24. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that the relative calm currently prevailing in the Caucasus was fragile and the situation in the Nagorno-Karabakh region was distinctly precarious. The search for a peaceful solution to that conflict should take account of the fact that Nagorno-Karabakh had never historically formed part of Azerbaijan, having been incorporated in that Republic by a decision of the ruling Communist party, and that the 1991 declaration of independence by Nagorno-Karabakh had been in full conformity with the Soviet law in force at the time. The people of Nagorno-Karabakh fully intended to secure the territory's independence through the exercise of the right to self-determination as set forth in international law.

25. As for the situation in the Kosovo region of former Yugoslavia, the right to self-determination claimed by the Kosovo Albanians - more than 90 per cent of the region's population - had been recognized in the case of less numerous peoples of the former Yugoslav Federation, such as the Slovenes, the Macedonians and the Montenegrins. Realization of the right to self-determination would be the best way of putting an end to the crisis in the region.

26. While the award of the Nobel Peace Prize to two champions of the rights of the people of East Timor undoubtedly represented an advance in the recognition of that people's legitimate struggle for independence, it did not suffice. The international community acting through the Commission and other bodies should insist on negotiations leading rapidly to a peaceful solution that would preserve the rights of the Timorese people.

Statements in exercise of the right of reply

27. Mr. TOUIMI (Observer for Morocco) said that, while his delegation recognized and appreciated the role of NGOs in the promotion of human rights, the representatives of two of them had displayed a lack of objectivity when speaking on the subject of Western Sahara. Contrary to their allegations, his Government was actively engaged in preparations for the holding of a referendum in the region. Its efforts in that connection were recognized in a number of United Nations documents, the most recent being a report by the Secretary-General dated 27 February 1997 (S/1997/166). The arrogant and frivolous accusations of partiality against earlier incumbents of the post of Secretary-General could not but cast doubt on the qualifications of the NGOs in question to serve as impartial mediators.

28. The assertion that Western Sahara was being colonized by Morocco was completely unfounded, only persons duly identified as being of Saharan extraction being permitted to enter the territory for the purpose of taking part in the coming referendum.

29. Mr. MOUSSAEV (Observer for Azerbaijan), replying to statements made by the representatives of two NGOs, said that self-determination was a right of peoples, not of ethnic minorities. The need to respect the sovereignty, territorial integrity and inviolability of the internationally recognized borders of Azerbaijan and the inadmissibility of the use of force to acquire territory had been emphasized in several Security Council resolutions, which also demanded the immediate and unconditional withdrawal of all occupying Armenian forces from Azerbaijan territory.

30. Nevertheless, Armenia was still maintaining a military presence in some 20 per cent of Azeri territory and as a result of aggression and ethnic clashes, more than 18,000 civilians had perished and Azerbaijan currently had about a million refugees and displaced persons. Extrajudical executions and mass shootings of Azeri civilians had been carried out by Armenian armed forces led by mercenaries and by well-known Armenian terrorist groups.

31. Mr. GHASSAN (Observer for the Syrian Arab Republic), referring to the statement by the representative of the United States of America that the Commission's agenda included three items on Israel, said that only item 4 related to Israel, item 7 being concerned with the right to self-determination anywhere in the world and item 10, inter alia, to the human rights situation in southern Lebanon and West Bekaa. There was unfortunately no item on the Middle East peace process, the withdrawal of Israeli forces from the Syrian Golan or the international commitment by the previous Israeli Government to withdraw to the 1967 borders of Israel.

32. Mr. NAZARIAN (Observer for Armenia), replying to the remarks just made by the observer for Azerbaijan, said that the major argument in favour of the principle of the right to self-determination as against that of territorial integrity in the case of the Nagorno-Karabakh conflict was the unacceptable current status of the region under permanent threat of genocide and deportation. Armenia's position on the matter was dictated by the tragic attempts at genocide perpetrated by the Azeri Government on Armenian populations in recent history and the acts of extermination perpetrated against Armenians during the Nagorno-Karabakh-Azeri conflict.

33. The rise of the Nagorno-Karabakh liberation movement in the late 1980s was no different from that of any of the other liberation movements which had led to the creation of a large number of Member States of the United Nations. The struggle of the Armenian population of Nagorno-Karabakh had its roots in past and present sufferings and in the natural aspiration to live freely on its ancestral lands in conditions of safety, security and peace.

The meeting rose at 6.05 p.m.